

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 412

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO ADMINISTRATIVE RULES; AMENDING SECTION 67-5201, IDAHO CODE, TO DEFINE A TERM AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 67-5204, IDAHO CODE, TO PROVIDE FOR ELECTRONIC PUBLICATION OF THE IDAHO ADMINISTRATIVE CODE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 67-5205, IDAHO CODE, TO PROVIDE FOR ELECTRONIC COPIES OF THE IDAHO ADMINISTRATIVE CODE, TO REVISE LANGUAGE RELATING TO THE FORMAT, COSTS AND DISTRIBUTION OF SUCH CODE, AND TO REVISE LANGUAGE RELATING TO CERTAIN FEES; AMENDING SECTION 67-5226, IDAHO CODE, TO REVISE LANGUAGE RELATING TO AN EXEMPTION FROM CERTAIN REQUIREMENTS OF IDAHO CODE AND TO MAKE TECHNICAL CORRECTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 67-5201, Idaho Code, be, and the same is hereby amended to read as follows:

67-5201. DEFINITIONS. As used in this act:

(1) "Administrative code" means the Idaho administrative code established in this chapter.

(2) "Agency" means each state board, commission, department or officer authorized by law to make rules or to determine contested cases, but does not include the legislative or judicial branches, executive officers listed in section 1, article IV, of the constitution of the state of Idaho in the exercise of powers derived directly and exclusively from the constitution, the state militia or the state board of correction.

(3) "Agency action" means:

(a) ~~the~~ The whole or part of a rule or order;

(b) ~~the~~ The failure to issue a rule or order; or

(c) ~~an~~ An agency's performance of, or failure to perform, any duty placed on it by law.

(4) "Agency head" means an individual or body of individuals in whom the ultimate legal authority of the agency is vested by any provision of law.

(5) "Bulletin" means the Idaho administrative bulletin established in this chapter.

(6) "Contested case" means a proceeding which results in the issuance of an order.

(7) "Coordinator" means the administrative rules coordinator prescribed in section 67-5202, Idaho Code.

(8) "Document" means any executive order, notice, rule or statement of policy of an agency.

(9) "Final rule" means a rule that has been adopted by an agency under the regular rulemaking process and is in effect.

(10) "License" means the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of

1 authorization required by law, but does not include a license required
2 solely for revenue purposes.

3 (11) "Official text" means the text of a document issued, prescribed,
4 or promulgated by an agency in accordance with this chapter, and is the only
5 legally enforceable text of such document. Judicial notice shall be taken
6 of all documents issued, prescribed, or promulgated in accordance with this
7 chapter.

8 (12) "Order" means an agency action of particular applicability that
9 determines the legal rights, duties, privileges, immunities, or other legal
10 interests of one (1) or more specific persons.

11 (13) "Party" means each person or agency named or admitted as a party, or
12 properly seeking and entitled as of right to be admitted as a party.

13 (14) "Pending rule" means a rule that has been adopted by an agency under
14 the regular rulemaking process and remains subject to legislative review.

15 (15) "Person" means any individual, partnership, corporation,
16 association, governmental subdivision or agency, or public or private
17 organization or entity of any character.

18 (16) "Proposed rule" means a rule published in the bulletin as provided
19 in section 67-5221, Idaho Code.

20 (17) "Provision of law" means the whole or a part of the state or federal
21 constitution, or of any state or federal:

22 (a) ~~a~~Statute; or

23 (b) ~~a~~Rule or decision of court.

24 (18) "Publish" means to bring before the public by publication in
25 the bulletin or administrative code, by electronic means or as otherwise
26 specifically provided by law.

27 (19) "Rule" means the whole or a part of an agency statement of general
28 applicability that has been promulgated in compliance with the provisions of
29 this chapter and that implements, interprets, or prescribes:

30 (a) ~~a~~Law or policy; or

31 (b) ~~a~~The procedure or practice requirements of an agency. The term
32 includes the amendment, repeal, or suspension of an existing rule, but
33 does not include:

34 (i) ~~a~~Statements concerning only the internal management or
35 internal personnel policies of an agency and not affecting private
36 rights of the public or procedures available to the public; or

37 (ii) ~~a~~Declaratory rulings issued pursuant to section 67-5232,
38 Idaho Code; or

39 (iii) ~~a~~Intra-agency memoranda; or

40 (iv) ~~a~~Any written statements given by an agency which pertain to
41 an interpretation of a rule or to the documentation of compliance
42 with a rule.

43 (20) "Rulemaking" means the process for formulation, adoption,
44 amendment or repeal of a rule.

45 (21) "Standard" means a manual, guideline, criterion, specification,
46 requirement, measurement or other authoritative principle providing a model
47 or pattern in comparison with which the correctness or appropriateness of
48 specified actions, practices or procedures may be determined.

1 (22) "Submitted for review" means that a rule has been provided to
 2 the legislature for review at a regular or special legislative session as
 3 provided in section 67-5291, Idaho Code.

4 (23) "Temporary rule" means a rule authorized by the governor to become
 5 effective before it has been submitted to the legislature for review and
 6 which expires by its own terms or by operation of law no later than the
 7 conclusion of the next succeeding regular legislative session unless
 8 extended or replaced by a final rule as provided in section 67-5226, Idaho
 9 Code.

10 SECTION 2. That Section 67-5204, Idaho Code, be, and the same is hereby
 11 amended to read as follows:

12 67-5204. PUBLICATION OF ADMINISTRATIVE CODE. (1) The administrative
 13 rules coordinator shall ~~annually~~ every year publish electronically a
 14 publication to be known as the "Idaho Administrative Code."

15 (2) The administrative code shall be a codification of:

16 (a) ~~a~~All executive orders of the governor that have been published in
 17 the bulletin and have not been rescinded;

18 (b) ~~t~~The text of all final rules;

19 (c) ~~a~~Any legislative documents affecting a final agency rule; and

20 (d) ~~a~~All documents required by law to be published in the
 21 administrative code.

22 (3) The text of all documents published electronically in the
 23 administrative code shall be the official text of that document. Judicial
 24 notice shall be taken of all documents published electronically in the
 25 administrative code.

26 SECTION 3. That Section 67-5205, Idaho Code, be, and the same is hereby
 27 amended to read as follows:

28 67-5205. FORMAT -- COSTS -- DISTRIBUTION -- FUNDS. (1) The
 29 administrative code and the permanent supplements thereto shall be
 30 published in such a manner that every agency has an opportunity to procure
 31 at reasonable cost from the coordinator, individual ~~printed pamphlet~~
 32 electronic copies of the rules and statements of policy of such agency
 33 published by authority of this chapter. No administrative rule or statement
 34 of policy published in the administrative code or the permanent supplements
 35 shall be reset or otherwise reprinted at public expense upon a format
 36 distinct from that of the administrative code without a certification by
 37 the coordinator that such special format is necessary for the effective
 38 performance by the agency of its functions.

39 (2) The prices to be charged for individual electronic copies of
 40 and subscriptions to the administrative code, the permanent supplements
 41 thereto and the bulletin, ~~for reprints and bound volumes thereof~~ and for
 42 ~~pamphlet~~ rules and statements of policy, which prices may be fixed without
 43 reference to the restrictions placed upon and fixed for the sale of other
 44 publications of the state, and the number of electronic copies which shall be
 45 distributed free for official use, in addition to those free copies required
 46 to be as provided in this section, shall be set by rules promulgated by
 47 the coordinator. The coordinator may set prices without reference to the

1 restrictions placed upon the sale of other publications of the state. Free
2 electronic copies shall be distributed by the coordinator, as follows:

- 3 (a) One (1) to each county clerk for the use of the county law library.
- 4 (b) One (1) each to the senate and the house of representatives.
- 5 (c) One (1) to the attorney general.
- 6 (d) One (1) to the legislative services office.
- 7 (e) One (1) each to the state universities and colleges, and one (1) to
- 8 each community college.
- 9 (f) One (1) to the state law library.
- 10 (g) One (1) to the commission for libraries.
- 11 (h) One (1) each to the following state depository libraries: Boise
- 12 Public Library, East Bonner County Library, Idaho Falls Public Library,
- 13 Lewiston City Library, Pocatello Library, The College of Idaho Library,
- 14 Brigham Young University-Idaho Library and Twin Falls Public Library.

15 In addition to those free electronic copies required to be distributed
16 by this section, the coordinator shall provide to the legislature free
17 electronic copies of all rules subject to review by the legislature pursuant
18 to section 67-5291, Idaho Code, and may distribute other free electronic
19 copies for official use.

20 (3) Without limiting the generality of the provisions of subsection
21 (2) of this section, the rules of the coordinator may provide for volume
22 discounts to be available to established law book publishers who agree to
23 incorporate fully administrative rules, the permanent supplements thereto
24 and the bulletin into their general scheme of promotion and distribution,
25 and may provide for the free reciprocal exchange of publications between
26 this state and other states and foreign jurisdictions. The provisions of
27 this section include the authority to exchange, display, access and publish
28 texts through electronic media.

29 (4) There is hereby created in the state treasury the administrative
30 code fund. All moneys received from the production of rules, the sale
31 of the administrative code, the permanent supplements thereto, or the
32 bulletin, and for providing electronic access, shall be deposited in the
33 fund. All agencies which have any material published electronically in
34 the bulletin, administrative code or supplements thereto, or newspapers,
35 are hereby authorized and directed to pay out of their appropriations to
36 the coordinator their respective shares of the costs of such publication
37 and distribution of such material. All moneys placed in the fund may be
38 appropriated to the coordinator for the administration of the provisions
39 of this chapter, and for the publication and distribution of the bulletin,
40 administrative code or supplements thereto, as authorized in this chapter.

41 The coordinator shall charge an annual fee to each participating agency
42 for each page published electronically in the administrative code not to
43 exceed fifty-six dollars (\$56.00) per page. In addition, the coordinator
44 shall charge a fee to each participating agency for each page published
45 electronically in the bulletin not to exceed sixty-one dollars (\$61.00)
46 per page. A fee per page may be charged even though less than a full page of
47 publication is required, and each participating agency shall promptly pay
48 into the administrative code fund such charge.

49 SECTION 4. That Section 67-5226, Idaho Code, be, and the same is hereby
50 amended to read as follows:

1 67-5226. TEMPORARY RULES. (1) If the governor finds that:

2 (a) ~~p~~Protection of the public health, safety, or welfare; or

3 (b) ~~e~~Compliance with deadlines in amendments to governing law or
4 federal programs; or

5 (c) ~~e~~Conferring a benefit;

6 requires a rule to become effective before it has been submitted to the
7 legislature for review the agency may proceed with such notice as is
8 practicable and adopt a temporary rule, except as otherwise provided in
9 section 67-5229(1)(d), Idaho Code. The agency may make the temporary rule
10 immediately effective. The agency shall incorporate the required finding
11 and a concise statement of its supporting reasons in each rule adopted in
12 reliance upon the provisions of this subsection.

13 (2) A rule adopted pursuant to subsection (1) of this section which
14 imposes a fee or charge may become effective under this section before it
15 has been approved, amended or modified by concurrent resolution only if the
16 governor finds that the fee or charge is necessary to avoid immediate danger
17 which justifies the imposition of the fee or charge.

18 (3) In no case shall a rule adopted pursuant to this section remain in
19 effect beyond the conclusion of the next succeeding regular session of the
20 legislature unless the rule is approved, amended or modified by concurrent
21 resolution, in which case the rule may remain in effect until the time
22 specified in the resolution or until the rule has been replaced by a final
23 rule which has become effective as provided in section 67-5224(5), Idaho
24 Code.

25 (4) Temporary rules shall be published in the first available issue of
26 the bulletin.

27 (5) Temporary rules are not subject to the requirements of section
28 67-5223, Idaho Code, provided that ~~the agency adopting the temporary rule~~
29 ~~sends to the director of legislative services a copy of the temporary rule~~
30 ~~at the same time the agency sends the temporary rule to the office of the~~
31 ~~administrative rules coordinator for publication in the bulletin~~ sends a
32 copy of the temporary rules to the director of the legislative services
33 office.

34 (6) Concurrently with the promulgation of a rule under this section,
35 or as soon as reasonably possible thereafter, an agency shall commence
36 the promulgation of a proposed rule in accordance with the rulemaking
37 requirements of this chapter, unless the temporary rule adopted by the
38 agency will expire by its own terms or by operation of law before the proposed
39 rule could become final.